

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINALD STEVENS,	§	
	§	No. 482, 2008
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0802003292
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 11, 2009

Decided: March 24, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 24th day of March 2009, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Reginald Stevens, the defendant below, appeals from a Superior Court final judgment of conviction. A jury convicted Stevens of Maintaining a Vehicle for Keeping a Controlled Substance and Possession of a Controlled Substance. On appeal, Stevens claims that the Superior Court abused its discretion by denying his motion to suppress drug evidence seized after an allegedly unlawful vehicle stop. Stevens argues that that stop was unlawful, because: (i) he was stopped for violating a noise ordinance based solely on a police officer's subjective interpretation of the ordinance, and (ii) the ordinance is unconstitutionally vague.

Because the Superior Court did not abuse its discretion by denying Stevens' motion to suppress, we affirm.

2. On February 3, 2008, at approximately 6:15 p.m., Wilmington Police Officer Mark Martinez pulled Stevens over for playing extremely loud music in Stevens' car, which Officer Martinez heard from a block and a half (approximately 300 feet) away. Martinez was able to feel the vibrations from the bass in Stevens' music when he drove past Stevens' car. Officer Martinez determined that Stevens was violating the City of Wilmington's Ordinance on "Noise Control and Abatement"¹ (the "Ordinance"), because Martinez believed that the Ordinance prohibited playing music from a vehicle that could be clearly heard more than 50 feet away.

3. After Officer Martinez pulled Stevens over and asked him for his license and registration, Stevens produced his registration and proof of insurance, but no driver's license. Officer Martinez performed a DMV check on Stevens, found that Stevens' license was suspended, and arrested Stevens for driving with a

¹ The Ordinance prohibits operating a noise amplifying device in such a manner:

[A]t any time during any 24-hour-day, and so as to be . . . plainly audible at a distance of 50 feet from such a device when operated within a motor vehicle on a public right-of-way or on a public space.

WILMINGTON, DEL., CODE § 11-60(c)(2)(a)(4).

suspended license. Upon searching Stevens at the police station, Officer Martinez discovered 25 bags of crack cocaine in Stevens' jacket pocket.

4. Before trial, Stevens moved to suppress that drug evidence. The Superior Court denied the motion, ruling that Officer Martinez had a reasonable and articulable suspicion that Stevens was violating the Ordinance. A jury convicted Stevens of Maintaining a Vehicle for Keeping a Controlled Substance and Possession of a Controlled Substance. This appeal followed.

5. In denying Stevens' motion to suppress, the Superior Court reasoned:

... that the officer acted reasonably under the circumstances. He described in detail the level of the noise. He described his actions. He clearly was familiar with the statute, although he certainly did not have it memorized, and the fact that he, for example, couldn't remember whether the enforcement provision was at the beginning or the end of Section 11-60, does not mean that the officer was not familiar with the salient and executory provisions of the statute. Therefore, I find based upon the noise, and a noise disturbance and violation of the ordinance, there was a reasonable articulable suspicion a crime was being committed in the context of the totality of the circumstances.

The Superior Court also stated:

I don't think [the Ordinance] does the police any favors either because it makes it difficult to know when enforcement should take place. I think there is a valid argument, that the [Ordinance], as written, is overly broad, unduly vague, which leaves a dangerous potential for disparate and arbitrary enforcement. This is particularly with regard to the definition of noise disturbance....

6. On appeal, Stevens claims the Superior Court abused its discretion in denying his motion to suppress. Stevens claims that suppression was required,

because: (i) Officer Martinez could not explain objectively how Stevens caused a noise disturbance, or what standard Officer Martinez used to determine that there was a noise disturbance, and (ii) the Ordinance is unconstitutionally vague and overbroad, requiring that any evidence resulting from the enforcement of the statute be suppressed. Stevens' argument that Officer Martinez arbitrarily enforced the Ordinance against him, appears to rest on the fact that during cross-examination at the suppression hearing, Officer Martinez could not explain precisely what was covered by the Ordinance.²

7. The State argues that the Superior Court correctly held that Officer Martinez, based on his detailed observations, had an articulable suspicion that Stevens was violating the Ordinance. The State claims that the Ordinance prohibits playing music that would be "plainly audible at a distance of 50 feet" when played "on a public right of way."³ The State does not contradict Stevens' assertion that the Ordinance is ambiguous, however.

8. The issue presented is what was required, in this context, to establish a reasonable and articulable suspicion for a police officer to conduct a vehicle stop.

² During cross-examination, Stevens' attorney pressed Officer Martinez to define what a noise disturbance was, but Officer Martinez could not articulate clearly what a noise disturbance was, other than stating that it was the type of noise that would disturb a person of "normal sensibilities." Officer Martinez did, however, correctly identify the 50 foot standard for noise coming from a motor vehicle.

³ WILMINGTON, DEL., CODE § 11-60(c)(2)(a)(4).

We do not address Stevens’ second argument—that the alleged unconstitutionality of the Ordinance required the suppression of the drug evidence. That argument is waived, because Stevens conceded at his suppression hearing that the alleged unconstitutionality of the Ordinance had no bearing on his motion to suppress.

9. We review the denial of a motion to suppress for abuse of discretion.⁴ We review issues of law *de novo*.⁵ “To be valid under the Fourth Amendment, an automobile stop must be based on an articulable and reasonable suspicion that the vehicle is subject to seizure for violation of the law.”⁶ To meet this standard, that suspicion must have some objective basis.⁷ A determination of reasonable suspicion must be based on the “totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer’s subjective interpretation of the facts.”⁸

10. Stevens argues that because Officer Martinez made a mistake of law, namely, that he did not understand precisely what the Ordinance requires, he was

⁴ *Lopez–Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008).

⁵ *Id.* at 1285.

⁶ *State v. Coursey*, 906 A.2d 845, 848 (Del. Super. Ct. 2006) (citing *Bease v. State*, 884 A.2d 495, 498 (Del. 2005)).

⁷ *Id.* (citing *Delaware v. Prouse*, 440 U.S. 648, 654 (1979)).

⁸ *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (citations omitted).

stopped without an articulable suspicion of criminal activity. Stevens relies on *State v. Coursey*,⁹ a Superior Court decision, for the proposition that where the seizing officer misunderstands the law upon which a traffic stop is based, and cannot articulate precisely how the defendant violated that law, any resulting evidence must be suppressed.

11. In *Coursey*, the seizing officer testified that he stopped a vehicle because the windows were tinted in violation of a Federal Motor Vehicle Safety Standard.¹⁰ The officer incorrectly stated that the Safety Standard was whether the tinting was so dark the occupants in the vehicle could not be seen.¹¹ In fact, the Standard was whether the windows were tinted over 70%.¹² The court found that “failure to understand the law by a person charged with enforcing it is not objectively reasonable” and that, therefore, the officer had no reasonable articulable suspicion to legally stop the vehicle.¹³

12. *Coursey* is factually distinguishable. Here, Officer Martinez could objectively apply the Ordinance. Although, he could not recite the Ordinance

⁹ 906 A.2d 845.

¹⁰ *Coursey*, 906 A.2d at 846-47. Delaware law incorporated that Federal Standard.

¹¹ *Id.* at 848.

¹² *Id.* at 847.

¹³ *Id.*

verbatim, Martinez knew that the Ordinance contained a 50 foot objective standard in determining a noise disturbance. Because Officer Martinez could hear Stevens' music from 300 feet away, he had proper grounds to stop Stevens.

13. Moreover, another Superior Court judge has questioned *Coursey* in a more recent decision, *State v. Trower*.¹⁴ There the Superior Court found that although the Safety Standard is violated only by a tint greater than 70%, an officer's inability to clearly see a car's occupants would provide a reasonable and articulable suspicion sufficient to stop the car to investigate a possible violation of that law.¹⁵

14. Based on the totality of the circumstances, Officer Martinez had a reasonable and articulable suspicion to stop Stevens. He could hear Stevens' music from 300 feet away, a distance far exceeding the Ordinance's 50 feet standard. Even if the Ordinance were vague, Stevens was clearly violating it, and Officer Martinez had grounds to pull him over. Once Martinez discovered that Stevens was driving on a suspended license, the resulting arrest and search were proper.

¹⁴ *State v. Trower*, 931 A.2d 456, 459 (Del. Super. Ct. 2007) (holding that "window tint which is so dark that one cannot see the occupants inside the vehicle creates a reasonable suspicion that it violates the standard."). The *Trower* court attempted to distinguish *Coursey*, by claiming that there was no mistake of law in *Trower*. The *Trower* court goes on to state, however, that if *Coursey* was not distinguishable, then it "respectfully declined to follow it." *Id.*

¹⁵ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice